

1 MR. ZABARTE: My name is Ian  
2 Zabarte, for the Western Shoshone National  
3 Council. I have several copies of my comments  
4 if you're interested in a hard copy. [The 1  
5 supplemental environmental impact statement  
6 does not include an understanding or analysis  
7 from a culturally appropriate tribal  
8 perspective, so I will provide one. Many  
9 early treaties were negotiated hastily under  
10 pressure from encroaching settlements and  
11 outbreaks of violence.

12 Many Indian tribes accepted  
13 inadequate compensation. Many Indian tribes  
14 joined the rebel armies during the Civil War.

15 The Western Shoshone Nation allied itself  
16 with the Republic of the United States in 1863  
17 through the treaty of Ruby Valley, allowing  
18 for the shipment of gold east to pay for the  
19 Union's war against the South, and ultimate  
20 victory. The state of Nevada was birthed  
21 under the blanket of aid and comfort that the  
22 Western Shoshone Nation provided.

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1           The treaty is in full force and  
2 effect, a fact confirmed in 1989 by federal  
3 district judge Bruce R. Thompson in the Dann  
4 case. In 1863, the Western Shoshone Nation  
5 was strong. The US sought purchase of  
6 specific rights of access and agreed to pay  
7 for damage caused to the ownership rights of  
8 the Western Shoshone Nation. \$5000 a month for  
9 twenty years -- that debt is still due. In  
10 1861, the United States Congress enacted the  
11 Nevada Enabling Act, excluding jurisdiction  
12 and Indian property from inclusion in Nevada.

13           "That nothing in this act  
14 contained shall be construed to impair the  
15 rights of person or property not pertaining to  
16 the Indians in said territory, so long as such  
17 rights shall remain un-extinguished by treaty  
18 between the United States and such Indians, or  
19 to include any territory, which by treaty with  
20 any Indian tribe, is not, without the consent  
21 of the tribe, to be included within the  
22 territorial limits or jurisdiction of any

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1 state or territory, but all such territory  
2 shall be excepted out of the boundaries and  
3 constitute no part of the territory of Nevada.  
4 The Western Shoshone Nation is not subject to  
5 US jurisdiction."

6 In 1883, the Nevada Supreme Court,  
7 in State v. M'Kenney, stated as much. This  
8 was against Judge M'Kenney. Where one Indian  
9 belonging to a tribe which is recognized and  
10 treated with by the government, having its  
11 chief and tribal laws, kills another of the  
12 same tribe, both parties, being under  
13 authority and subjection of such tribal laws,  
14 the courts of this date under general criminal  
15 laws have no jurisdiction of the offense. And  
16 since our Organic Act provides that rights of  
17 persons or property not pertaining to the  
18 Indians shall not be impaired, so long as they  
19 remain un-extinguished by treaty between the  
20 United States and such Indians, it follows  
21 that authorities of the tribe alone have the  
22 right to take cognizance of the crime.

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1 Land ownership protected by legal  
2 title is the hallmark of western civilization.

3 As it surveyed the public domain, the United  
4 States began transferring title by right it  
5 obtained in land sessions from enabling  
6 legislation of territorial governments or  
7 treaties with Indians. The current regulatory  
8 authority for administration of public lands  
9 has no purchase power or authority to transfer  
10 ownership of property from the Western  
11 Shoshone Nation to the United States.

12 Under 10CFR63 land ownership and  
13 control, the Department of Energy is required  
14 to have ownership, jurisdiction, and control  
15 of interests in land used as a repository.  
16 The SEIS claims -- the Indian Claims  
17 Commission Process a quasi-judicial process,  
18 and the Dann case before the United States  
19 Supreme Court proved US ownership. If such is  
20 the process, judicial legislation, then it is  
21 suspect, and the current claim of ownership by  
22 the Department of Energy through federal land

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1 management statutes is a fraud to control  
2 Yucca Mountain, to achieve through force what  
3 cannot be done in fair and honorable dealings  
4 with a smaller nation.

5 We are afraid of the prospects of  
6 nuclear waste in our country, and fear the  
7 aggressive process deployed so forcefully that  
8 we are helpless to resist. The only role for  
9 Indian tribes is the removal of archaeological  
10 resources, SEIS 11.3 table 11.1. We live with  
11 uncertainty and fear about a process that  
12 requires removal of our cultural ties to the  
13 land. The SEIS does not consider lifestyle  
14 differences for Indians in its calculations.

15 When nuclear weapons are developed  
16 in our country, our people are not protected.

17 We find our own understanding of death and  
18 illness known to be plausible from exposure to  
19 radiation. We educate ourselves considering  
20 lifestyle differences that likely contribute  
21 to our adverse health consequences through  
22 unique exposure pathways related to our

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1 culture. We are certainly alone in the  
2 defense of our nation against the super power  
3 of the United States.] ... Continued below

4 [After nine years from seeking 2  
5 affected Indian tribe status under the Nuclear  
6 Waste Policy Act, the Timbisha Shoshone Tribe  
7 was certified as an affected Indian tribe in  
8 July of this year. However, nearly six months  
9 later, the Timbisha Shoshone Tribe is refused  
10 funding to conduct its own oversight and  
11 monitoring of the Department of Energy  
12 activities, and adequately prepare for the  
13 Nuclear Regulatory Commission's licensing  
14 process.

15 The state of Nevada is funded,  
16 many counties are funded, but not the Timbisha  
17 Shoshone Tribe. This is another disgustingly  
18 shameful example of discrimination by the  
19 Department of Energy.] [We are a special 1  
20 population with unique vulnerabilities. Continued

21 Unlike the United States, the Western Shoshone  
22 Nation does have a national ethnic identity.

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1 Our cultural identity as a people is more  
2 important than US nuclear development and  
3 profit of the nuclear industry.

4 Our culture is our strength as a  
5 people, and is the wealth of our nation. The  
6 DOE study for the identification of cultural  
7 objects attempted to address how the  
8 Department of Energy deals with Native  
9 American holistic relationships at Yucca  
10 Mountain. A tribal study group was created by  
11 the Department of Energy. Recommendations  
12 were proffered by researchers, and the tribal  
13 study participants then told they should  
14 accept the recommendations.

15 The researchers understood that  
16 the recommendations they offered violated  
17 Native American traditional religious beliefs.

18 The researchers themselves provided the  
19 outcomes of the process they conceived and  
20 call cultural triage to support the Department  
21 of Energy Yucca Mountain process. The word  
22 triage is of French origin. It denotes the

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1 action of sorting according to quality. Used  
2 lawfully, triage in declared war, flood,  
3 famine, or national disaster is appropriate.  
4 However, when applied by the United States for  
5 the proffer to the nuclear industry on a  
6 living culture, cultural triage is genocide, a  
7 violation of the UN convention on the  
8 punishment and prevention of the crime of  
9 genocide and the 1987 Proxmire Act, the US  
10 enactments of the convention.

11 I have a responsibility as a human  
12 being and an obligation to humanity to stop  
13 this process. So do you. Under the treaty of  
14 Ruby Valley as well, our peoples obligated  
15 each other to protecting the peace. Moral  
16 people with ethical scientists cannot condone  
17 the use of such practices for the profit of  
18 the US nuclear industry. Transportation of  
19 waste to Yucca Mountain would place a  
20 disproportionate burden upon the Western  
21 Shoshone Nation and other Native American  
22 tribes and is not addressing the SEIS.

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1                   It is environmental racism.]

2       [Special effects or stigma related impacts to  
3       Native Americans are not addressed in the SEIS  
4       or the draft environmental impact statement  
5       rail alignment. Tribes along the  
6       transportation corridors, and especially those  
7       with tourism-based economies and gaming  
8       facilities, must be assessed for stigma-  
9       related impacts that may cause irreparable  
10      harm to tribal economies from transportation  
11      accidents. The NEPA process across the board  
12      -- in just about every process -- does not  
13      consider stigma-related impacts.]

14               [We ask for an extension of the  
15      time to submit comments.] Additional comments  
16      will be submitted by the Western Shoshone  
17      National Council. These comments are to be  
18      filed with a report this month with the UN  
19      Human Rights Commission Committee on the  
20      Elimination of Racial Discrimination. Thank  
21      you.

22                   MR. BROWN: Thank you Ian. I guess

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1 we have another -- Okay, we do have another  
2 person signed up to speak. Josh Linder,  
3 welcome.

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